



UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF CALIFORNIA

In re:	)	Case No. 98-38409-C-7
	)	
TIMOTHY ROBERT TAYLOR,	)	Adversary No. 11-2356
	)	
Debtor(s).	)	DC No. USA-1
	)	
TIMOTHY ROBERT TAYLOR,	)	
	)	
Plaintiff(s),	)	
	)	
v.	)	
	)	
U.S. DEPARTMENT OF HEALTH AND	)	
HUMAN SERVICES, OFFICE OF THE	)	
INSPECTOR GENERAL, U.S.	)	
DEPARTMENT OF EDUCATION, U.S.	)	
DEPARTMENT OF JUSTICE,	)	
	)	
Defendant(s).	)	

MEMORANDUM DECISION

The debtor Timothy Robert Taylor filed this adversary proceeding in which he seeks to have the U.S. Department of Health and Human Services, the Office of the Inspector General, the U.S. Department of Education, and the U.S. Department of Justice held to be in violation of a discharge entered by this court on March 19, 1999, in his chapter 7 bankruptcy case No. 98-38409-A-7. The United States has moved to dismiss.

This court has construed the action to be in the nature of seeking a determination whether student loan debts exceeding \$435,000 are excepted from discharge by virtue of 11 U.S.C. § 523(a)(8).

1 The reason the debtor contends this should be a contempt  
2 action is his belief that the aforesaid student loan debts were  
3 discharged in 1999 and that all collection efforts are a contempt  
4 of that order.

5 The procedural history of that case is as follows. Timothy  
6 Taylor, listing himself as a self-employed psychotherapist, is a  
7 medical doctor who filed case No. 98-38409-A-7 on November 30,  
8 1998. The debtor represented himself.

9 A meeting of creditors was set for January 6, 1999. The  
10 chapter 7 trustee filed a report on January 6, 1999, at the  
11 conclusion of the meeting of creditors, that no assets had been  
12 found that could be liquidated for the benefit of the estate and,  
13 on the same day, filed a report of no distribution.

14 On January 7, 1999, there was issued the standard Notice of  
15 Filing Report of No Distribution, Combined with Order Fixing  
16 Deadline to Object Thereto, in which notice was given to all  
17 creditors that the trustee had found that there were no funds  
18 available from the estate for distribution to creditors, that the  
19 estate had been fully administered and ordered that unless an  
20 objection was filed setting a hearing for February 22, 1999, the  
21 court would enter an order approving the trustee's report,  
22 discharge the trustee, and close the case.

23 On March 19, 1999, a discharge of the debtor, pursuant to 11  
24 U.S.C. § 727, was entered.

25 On May 11, 1999, a second report of a finding of no assets  
26 based on the January 6, 1999, meeting of creditors was filed by  
27 the trustee, together with a report of no distribution. A second  
28 Notice of Filing Report of No Distribution, Combined with Order

1 Fixing Deadline to Object Thereto was issued to all creditors  
2 identical in form to the previous notice and requiring objections  
3 be filed and a hearing set on June 28, 1999. No objections were  
4 filed in response to the second notice.

5 On August 30, 1999, a Final Decree was entered determining  
6 that the case was closed.

7 The record reflects that there was no adversary proceeding  
8 filed in the bankruptcy case.

9 The debtor's theory that his student loans were discharged  
10 in case No. 98-38409-A-7 appears to be premised on an attachment  
11 that the debtor included at the back of his petition as part of  
12 the petition package. That document, which was not signed and  
13 not separately filed and for which there is no proof of service  
14 on any creditor, is entitled Declaration of Timothy B. Taylor in  
15 Support of Petition for Discharge of Student Loans Under Hardship  
16 Code Sec. 523(a)(8)(B). In the declaration, the debtor asserted  
17 the reasons why he thought that his student loans should be  
18 discharged, notwithstanding § 523(a)(8).

19 A careful review of the file, which was retrieved from  
20 archives, reveals that there is no indication that anybody  
21 received any notice regarding this declaration by the debtor. It  
22 was not separately docketed and, hence, does not appear on the  
23 docket. It was not served on any student loan creditor, and it  
24 does not appear that any notice was otherwise given to any  
25 creditor of the existence of this document that was appended to  
26 the petition. The most that any creditor, including student loan  
27 creditors, had by way of notice was the information that they had  
28 been scheduled as creditors.

1 The Illinois Student Assistance Commission filed a proof of  
2 claim in the amount of \$10,398.21, attaching a letter stating  
3 that it regarded its debt nondischargeable "unless the petitioner  
4 initiates a proceeding to determine the dischargeability of the  
5 scheduled student loan indebtedness."

6 On January 16, 2007, the debtor filed case No. 07-00044, In  
7 re Timothy R. Taylor, in the United States Bankruptcy Court for  
8 the District of Hawaii. The student loan creditors were not  
9 scheduled. A meeting of creditors was held and the trustee filed  
10 a finding of no assets on February 28, 2007. A chapter 7  
11 discharged was entered May 1, 2007, as was a Final Decree in the  
12 case.

13 Collection activities have been pursued by the United  
14 States, which triggered the filing of the instant proceeding.  
15 The pertinent loan is straight forward. A discharge issued under  
16 § 727 has the consequence stated in 11 U.S.C. § 524(a). The  
17 discharge operates to eliminate "the personal liability of the  
18 debtor with respect to any debt discharged under section 727,  
19 944, 1141, 1228, or 1328 of this title, whether or not discharge  
20 of such debt is waived." There is an inherent ambiguity in this  
21 language because it does not say what debts are or are not  
22 discharged under § 727, which is the pertinent discharge in this  
23 case.

24 The answer to the question of which debts are discharged is  
25 to be found primarily in § 523(a), which provides, in pertinent  
26 part:

27 A discharge under section 727, 1141, 1228(a), 1228(b), or  
28 1328(b) of this title does not discharge an individual  
debtor from any debt--

1 (8) unless excepting such debt from discharge under this  
2 paragraph would impose an undue hardship on the debtor and  
the debtor's dependents, for--

3 (A) (i) an educational benefit  
4 overpayment or loan made, insured, or  
guaranteed by a governmental unit, or made  
5 under any program funded in whole or in part  
by a governmental unit or nonprofit  
6 institution; or

7 (ii) an obligation to repay funds  
received as an educational benefit,  
8 scholarship, or stipend; or

9 (B) any other educational loan that is a  
qualified educational loan, as defined  
10 in section 221(d)(1) of the Internal  
Revenue Code of 1986, incurred by a  
debtor who is an individual.

11 11 U.S.C. § 523(a).

12 The rules of procedure require that there be an adversary  
13 proceeding to determine the dischargeability of a debt. Fed. R.  
14 Bankr. P. 7001(b). No such adversary proceeding was filed in  
15 this instance. The decision of the United States Supreme Court  
16 in United Student Aid Funds, Inc. V. Espinosa (In re Espinosa),  
17 130 U.S. 1367 (2010), does not alter the analysis. In that case,  
18 a chapter 13 plan purported to provide that a student loan within  
19 the scope of § 523(a)(8) would be discharged. The creditor had  
20 one ambiguous notice of the plan provision and an opportunity to  
21 object to confirmation of the chapter 13 plan. After the chapter  
22 13 plan was confirmed, the chapter 13 trustee wrote to the  
23 creditor to note that the proof of claim filed by the creditor  
24 was not consistent with the plan, which provided for lower  
25 payments and a discharge and that the trustee would pay in  
26 accordance with the provisions of the plan unless the creditor  
27 objected. Hence, notice to the creditor was unambiguous. The  
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1 Supreme Court held that, on these facts, the basic due process  
2 requirements of Mullane v. Central Hanover Bank & Trust Co., 339  
3 U.S. 306 (1950), had been satisfied.

4 In the present case, the declaration on which the debtor  
5 relies is a document that was never separately docketed. It was  
6 a document that the debtor did not even sign. Notice of it was  
7 given to nobody. This does not satisfy the requirement of  
8 Mullane as reiterated by the Supreme Court in the Espinosa case.  
9 Moreover, there certainly was no judicial determination made in  
10 case No. 98-38409-A-7 that the student loan would be an undue  
11 hardship for the debtor to be required to pay student loan debts  
12 within the meaning of § 523(a)(8).

13 Thus, the present action against the United States is based  
14 on a faulty premise. The student loan debts were not discharged  
15 in case No. 98-38409-A-7.

16 It is recognized that there is not a statute of limitations  
17 that applies to student loan nondischargeability actions and that  
18 debtors occasionally file such actions to seek a determination  
19 after a chapter 7 case has been closed. The relevant  
20 considerations that are taken into account in addressing such  
21 matters focus on the time that the action is actually tried and  
22 whether, in light of the circumstances then prevailing, repaying  
23 the debt would constitute an undue hardship.

24 This court has located no case where a debtor has been  
25 permitted to maintain such an action more than ten years after  
26 the bankruptcy case was filed. If such an action were to be  
27 filed by the debtor in this case, the facts asserted in the  
28 unsigned declaration that was appended to the debtor's petition,

1 schedules, and statement of financial affairs would be largely  
2 irrelevant. Thus, even if this action were construed as an  
3 action under § 523(a)(8), it would need to be dismissed.

4 Accordingly, the motion of the United States will be  
5 granted, the motion of the plaintiff will be denied, and the  
6 adversary proceeding will be dismissed.

7 An appropriate order will issue.

8 Dated: September 15, 2011.

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12 UNITED STATES BANKRUPTCY JUDGE  
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**CERTIFICATE OF SERVICE**

On the date indicated below, I served a true and correct copy(ies) of the attached document by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed and by depositing said envelope in the United States mail or by placing said copy(ies) into an interoffice delivery receptacle located in the Clerk's Office.

Timothy R. Taylor  
531-A N Hollywood Way #114  
Burbank CA 91505

Jeffrey J. Lodge  
2500 Tulare St #4401  
Fresno CA 93721

Dated: 9/19/11

  
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DEPUTY CLERK